

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DORIS PATTERSON and EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, NEW ORLEANS DISTRICT, New Orleans, LA

*Docket No. 99-2299; Submitted on the Record;
Issued October 5, 2000*

DECISION and ORDER

Before DAVID S. GERSON, A. PETER KANJORSKI,
VALERIE D. EVANS-HARRELL

The issue is whether appellant has established that she is entitled to a schedule award for permanent impairment to her upper extremities.

On November 3, 1993 appellant, then a 41-year-old secretary, filed an occupational disease claim alleging that her carpal tunnel syndrome was due to her use of the computer in her federal employment. The Office of Workers' Compensation Programs accepted the claim for bilateral tendinitis, which was later updated to bilateral carpal tunnel syndrome, authorized right carpal tunnel release surgery and paid appropriate compensation.

On February 17, 1998 appellant filed a claim for a schedule award.

In an attending physician's form (CA-20), received by the Office on March 2, 1998, Dr. Donald C. Faust, appellant's attending Board-certified orthopedic and hand surgeon, noted a 10 percent impairment of the left upper extremity.

By letter dated October 6, 1998, the Office informed appellant that she might be entitled to a schedule award and advised her as to the information necessary to support her claim including what her treating physician should include in her report.

In a report dated October 14, 1998, Dr. Faust found that appellant had no impairment as all of her neurological function was intact. A physical examination revealed:

"The wrists supinate 90, pronate 90, extend 80 and flex 90 degrees. She has full mobility of the fingers with the thumb hyperextending 30 and flexing to 80 degrees. The metacarpophalangeal joints flex from 0 to 90, the middle joints flex 0 to 110 and the distal joints all flex 0 to 80 degrees. She's diffusely tender about the right wrist not well localized to the median nerve and the [w]rist flexion test causes pain without radiation. She's sensitive throughout the right forearm."

In his report, Dr. Faust noted he reviewed September 11, 1996 and May 14, 1998 nerve conduction studies. He noted that the September 11, 1996 nerve conduction study indicated a normal electromyogram and that appellant had “a motor latency of 6.1 on the left median” with a “sensory of 6.6 milliseconds” and a right motor latency of 5.1 with a “sensory is 5.7 indicating ‘an opinion of a moderately severe carpal tunnel syndrome.’” On the repeat nerve conduction studies dated May 14, 1998, Dr. Faust noted a “right median motor latency of 5.0, sensory 5.3” and a “left 5.2 motor and 5.8 sensory.” In conclusion, he noted that the only abnormality appellant had consisted of “conduction delays across the wrist” which Dr. Faust indicated was not consistent with carpal tunnel syndrome and that there was no measurable impairment.

By letter dated November 12, 1998, the Office advised appellant that it had received Dr. Faust’s report and the medical evidence did not support an award of a schedule award at that time as there was no impairment.

By decision dated January 29, 1999, the Office denied appellant’s claim for a schedule award. The Office noted that it had reviewed the CA-7 appellant had submitted claiming impairment, but determined that the weight of the medical evidence remained with Dr. Faust’s October 14, 1998 report which found no impairment.

In a letter dated March 1, 1999, appellant requested reconsideration of the denial of her schedule award and referred to the CA-20 by Dr. Faust where he noted a 10 percent impairment. In support of her request, appellant submitted medical reports from Drs. R. Hugh Fleming, Faust and Claud Williams as well as a billing statement from Dr. Fleming.

By decision dated April 2, 1999, the Office denied appellant’s application for review on the grounds that the application neither raised substantive legal questions, nor included new and relevant evidence which warranted a merit review of the prior decision.

On April 15, 1999 appellant again requested reconsideration and subsequently submitted an April 19, 1999 report by Dr. Leslie M. Bishop, a physician Board-certified in physical medicine and rehabilitation, in support of her request.

Dr. Bishop determined that appellant had reached maximum medical improvement as of April 19, 1999 and that she had a zero percent impairment of the whole person. The physician noted that appellant’s electrodiagnostic testing revealed “no evidence of focal neuropathy, peripheral neuropathy, acute radiculopathy of the right upper extremity or paraspinal muscles.” Dr. Bishop reported that appellant had a “Negative Tinel’s [sign] over the median nerves at the wrist or the ulnar nerves at the elbow.” Utilizing the fourth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, Dr. Bishop concluded that appellant had no impairment for loss of range of motion or neurological impairment.

In a May 3, 1999 report, the Office medical adviser concurred with Dr. Bishop that appellant had no impairment pursuant to the A.M.A., *Guides*.

By merit decision dated May 6, 1999, the Office denied appellant’s request for a schedule award as the medical evidence of record indicated that she had no permanent impairment.

The Board finds that appellant has not established entitlement to a schedule award.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³ However, neither the Act nor the regulations specify the method, by which the percentage of impairment shall be determined.⁴ The method used in making such determinations rests in the sound discretion of the Office.⁵ For consistent results and to ensure equal justice for all claimants, the Office has adopted and the Board has approved, the use of the appropriate edition of the A.M.A., *Guides* as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.

The Federal (FECA) Procedure Manual provides that the Office should advise any physician evaluating permanent impairment to use the A.M.A., *Guides*.⁶ The procedure manual further states that injuries can leave objective or subjective impairments, which cannot be easily measured by the A.M.A., *Guides*, such as, *inter alia*, pain, atrophy and loss of sensation and that such effects should be explicitly considered.⁷

In his October 14, 1998 report, Dr. Faust stated that appellant had no impairment.

In an April 19, 1999 report, Dr. Bishop opined that appellant had reached maximum medical improvement as of April 19, 1999. He determined that appellant had no impairment based upon the fourth edition of the A.M.A., *Guides*.

In a report dated May 3, 1999, the Office medical adviser indicated that he had reviewed Dr. Bishop's April 19, 1999 report and concurred with the assessment that appellant had zero impairment pursuant to the A.M.A., *Guides* due to her accepted employment injury.

The Board finds that appellant has not established entitlement to a schedule award as she has submitted no medical reports from a physician explaining how, pursuant to the A.M.A.,

¹ 5 U.S.C. § 8101 *et seq.* (1974); 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19); *Thomas L. Iverson*, 50 ECAB ____ (Docket No. 98-446, issued August 5, 1999); *John M. Gonzales, Jr.*, 48 ECAB 357 (1997).

⁴ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁵ *James J. Hjort*, 45 ECAB 595, 599 (1994).

⁶ *See id.*; *Luis Chapa, Jr.*, 41 ECAB 159 (1989); *Leisa D. Vasser*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁷ *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6(a) (March 1995).

Guides, her accepted bilateral carpal tunnel syndrome caused any permanent impairment to a schedule member of the body.

In support of her reconsideration request, appellant submitted medical reports from Drs. Fleming, Faust and Williams as well as a billing statement from Dr. Fleming, which were previously of record. With regard to the resubmitted reports of Drs. Fleming, Faust and Williams, the Board finds that these reports were previously submitted and reviewed by the Office and are, therefore, of little probative value.

The decisions of the Office of Workers' Compensation Programs dated May 6, April 2 and January 29, 1999 are hereby affirmed.

Dated, Washington, DC
October 5, 2000

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member

Valerie D. Evans-Harrell
Alternate Member